UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

R. SABEE COMPANY, LLC, DRAPER PRODUCTS, INC., CIRCLE MACHINERY & SUPPLY CO., SABEE PRODUCTS, INC., STANFORD PROFESSIONAL PRODUCTS, SABEE REALTY, INC. AND JMS CONVERTERS, INC. d/b/a JMS CONVERTING, as single employer, and/or continuing enterprise; and/or R.SABEE COMPANY, LLC, DRAPER PRODUCTS, INC., CIRCLE MACHINERY & SUPPLY CO., STANFORD PROFESSIONSL PRODUCTS CORPORATION, SABEE REALTY, INC., and its successors SABEE PRODUCTS, INC., AND JMS CONVERTERS, INC. d/b/a JMS CONVERTING

and Case 30-CA-16482-1

UNITED STEEL PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 2-932

***Paul Bosanac, Esq.***, for the General Counsel
***Marianne Goldstein Robbins, Esq.***, for the Charging Party
***John E. Thiel, Esq. and Gordon B. Gill Esq.***, for the Respondent

DECISION

## STATEMENT OF THE CASE

Jane Vandeventer, Administrative Law Judge. This case was tried on November 15, 2004, February 14, 15, and 16, 2005, and August 1, 2006, in Appleton, Wisconsin.

Prior to the opening of the case, the General Counsel withdrew its complaint allegations against R. Sabee Company, LLC (herein R. Sabee), Draper Products, Inc. (herein Draper), and Circle Machinery & Supply Co. (herein Circle), because those three Respondents had entered into a Settlement Agreement with the General Counsel. Facts regarding those three Respondents comprise essential parts of the evidence in the record, but no remedy or order was sought regarding those three Respondents, and none has been recommended. The remaining entities involved in this proceeding are

Sabee Products, Inc. (herein SPI), Stanford Professional Products (herein Stanford), Sabee Realty, Inc. (herein Realty), and JMS Converters, Inc. d/b/a JMS Converting (herein JMS). These four entities will be referred to as Respondents or by their individual names.

The complaint alleges Respondents, as a single employer, or in the alternative as and alter ego and/or a continuance of a single employer, or in the alternative as a successor employer, violated Section 8(a)(1) and (3) of the Act by laying off employees, and by refusing to recall or rehire bargaining unit employees. The complaint also alleges Respondents violated Section 8(a)(1) and (5) of the Act by laying off employees, moving machinery and employees from one location and one employing entity to another, failing to recall and/or rehire employees, all without notice to the Union[1] and without affording the Union an opportunity to bargain about these actions and/or the effects of these actions, by withdrawing recognition from the Union, by failing and refusing to apply the collective bargaining agreement to the employees, and by failing and refusing to provide necessary and relevant information to the Union. The Respondents filed answers denying the essential allegations in the complaint. After the conclusion of the hearing, the parties filed briefs which I have read.

Based on the testimony of the witnesses, including particularly my observation of their demeanor while testifying, the documentary evidence, and the entire record, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondents SPI and JMS are corporations with offices and places of business in Appleton, Wisconsin, where they are engaged in the manufacture of disposable health care products. During a representative one-year period, Respondents sold and shipped from their Appleton facility goods valued in excess of $50,000 directly to points outside the state of Wisconsin. Accordingly, I find, as Respondents admit, that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent Stanford is a corporation with an office and place of business in Pennsauken, New Jersey, where it is engaged in the distribution of medical and dental products. During representative periods, Respondent Stanford sold and shipped goods valued in excess of $50,000 directly to points outside the state of New Jersey. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Charging Party (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

[1] The Union filed the original charges under its then name “Paper, Allied-Industrial, Chemical and Energy Workers Union (PCE) AFL-CIO-CLC, Local 7-0932.” On the last day of hearing in the instant matter, all parties stipulated that the Union had changed its name to that stated in the caption of this case.

## II. UNFAIR LABOR PRACTICES

### A. The Facts

#### 1. Background

The group of companies involved in this case are owned predominantly by related individuals in the Sabee family. The late patriarch of the family, Reinhardt Sabee[2], began Circle about 1948, and added companies over the years. Circle was a manufacturer of packaging machinery and paper converting machinery. Two years later, a second company, R. Sabee, was started, and manufactured disposable health care products. Reinhardt's son Michael Sabee first began working for R. Sabee not long after it's founding. After college in 1965, he joined the family businesses full time. Draper was begun in the 1960's, and it also manufactured disposable health care products. By 2001, Draper was owned one-third by Reinhardt Sabee, one-third by Lois Sabee, his wife, and one-third by Michael Sabee. The company group used two main business locations, one on Highland Avenue (Highland facility) and, beginning in the 1960's, a second location at West 8th Street and Linwood (Linwood facility). R. Sabee and Draper used both facilities for their manufacturing activities. Stanford was begun by Reinhardt Sabee and a partner, Ralph Stanford, in the late 1960's. Initially it also manufactured health care products, but after 1984, operated a warehouse and distribution center in New Jersey. Michael Sabee initially owned a 45% interest in Stanford, and continues to be a corporate director.

In 1975, Michael Sabee founded SPI and owned and operated it himself. Like Draper, SPI manufactured health care products at both the Linwood and Highland facilities. By 2001, these two companies, along with R. Sabee, manufactured products. It is undisputed that manufacturing employees were nominally employed by R. Sabee, but in fact performed work for all three companies. The manufacturing employees at the Linwood and Highland facilities have been represented by a labor organization for over 25 years. Since 1982, Michael Sabee has been involved in collective bargaining negotiations for this bargaining unit, and signed seven successive collective bargaining agreements on behalf of R. Sabee from 1982 through 1999. His name was listed along with the title, "President" in the agreements. The last agreement was effective by its terms from November 1,1999 until October 31, 2004. Michael Sabee was responsible for conducting labor relations with the Union up through January 18, 2002. At the beginning of 2002, there were approximately 200 employees in the bargaining unit.

In his testimony, Michael Sabee could not say how much time he spent on the business of each of the three manufacturing companies, R. Sabee, Draper, and SPI, because he did not keep track. He was paid by all three companies for some periods of time, by R. Sabee and SPI for some periods, and by SPI only for some periods, but he did not know when he was paid by which companies.

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[2] Reinhardt Sabee died in January 2005.

Several other companies were also part of the family's group of companies. Realty, the majority of which is owned by Michael Sabee and his brother Craig, operated as a real estate holding company by 2001. It owned real estate at the Linwood and Highland facilities. There were no written leases or agreements' showing how much was to be paid for the use of the facilities by the three manufacturing companies.

By the time of events relevant to this case, Reinhardt Sabee had largely retired from active participation in the businesses. His wife, Lois Sabee, remained somewhat involved, and all three of their children, John Michael Sabee (herein Michael Sabee), Sherry Sabee Donovan Ahlman, and Chris Sabee, were involved in the businesses to varying extents.

2. Businesses in 2001

The record reflects that during 2001, prior to the allegations of unfair labor practices, the main three companies were largely run by Michael Sabee. The three manufacturing companies, R. Sabee, Draper, and SPI, all used the same employees and machinery in conducting their operations. There was an understanding that each company would pay the other companies for rent, for use of their machinery and for use of their employees, but it is not clear in the record how regularly these payments were made pursuant to the understanding. It is clear in the record that the method of arriving at the amounts of these payments was formulated solely by Reinhardt Sabee while he was active in the business, and for at least the several years prior to 2002, solely by Michael Sabee. There was no evidence that the inter-company payments were arms-length transactions. In fact, Michael Sabee testified that money was simply moved from one company to another as needed.

In 2001, certain other members of the family, such as Michael Sabee's mother and sister, became unhappy with the way he was running the companies. For convenience, this part of the family is called the Lois Sabee group. In late 2001, they approached Michael Sabee about agreeing to some changes, and when he would not agree, decided to hire new managers for the business. On January 18, 2002, the Lois Sabee group changed the locks on the buildings at the Linwood and Highland facilities, and locked Michael Sabee out of the businesses. They hired a team of managers to run the businesses in Michael Sabee's absence.

3. Sabee Family Disagreement and State Court Proceedings

Immediately after the lockout, Michael Sabee filed a suit in Wisconsin State Court seeking to regain his businesses, and shortly thereafter an injunction hearing was held. In Michael Sabee's testimony under oath at that hearing, he described the operation of SPI, R. Sabee, and Draper at being "a comingling [sic] of assets and employees and equipment." He described himself as president or "president-type" of all three companies. He further stated that no lines were drawn between the companies, and "they all worked in concert with each other." Michael Sabee described himself as being responsible for procuring the raw materials for the manufacturing processes for all three companies, stated that all three companies share the facilities at Linwood and Highland,

and that all three companies use the manufacturing equipment at the two facilities. The three companies all share front office space and employees as well as production facilities. With regard to the payment of utilities and taxes on the facilities, Michael Sabee stated " the money was primarily moved around as it was needed." When R. Sabee and Draper experienced a need for cash during the five or so years before the injunction hearing, Michael Sabee borrowed money personally and used it in these businesses to pay for purchases, payroll, and inventory. Michael Sabee testified that he did not know how much money had been moved back and forth between R. Sabee, Draper and SPI. In his testimony, Michael Sabee estimated that SPI was "responsible for" about 80% of the weekly payroll for the employees. The payroll account was funded by SPI.

In testimony at the instant hearing, Michael Sabee testified that he was the main decision maker for Draper, owned and operated SPI himself, and was the chief operating officer for R. Sabee. All three companies were producing the same or similar health care products at the same facilities, using the same employees and equipment. Michael Sabee himself "allocated" customers among the three companies. Michael Sabee admitted that as of 2001, the three companies had been commingling assets and equipment, and "working in concert" with each other for approximately 25 years. Michael Sabee signed the tax returns for the companies. All three companies used the same office space, the same accountant and the same labor attorney. Michael Sabee testified that he does not know whether there was a board of directors for any of the three companies, or whether the boards, if they existed, ever met or took minutes of the meetings. While Michael Sabee took out personal loans to help shore up R. Sabee and Draper when they needed cash, the loans were repaid out of company funds, but Michael Sabee did not know which of the two companies made payments. Other evidence at trial showed that Michael Sabee signed various documents in his capacity of president or chief operating officer of R. Sabee, Draper, and SPI for several years before January 18, 2002, and decided himself how costs and payments would be distributed among the three companies.

4. Eighteen Month Interim Period and Settlement in 2003

The preliminary injunction proceedings gave Michael Sabee access to the business. Michael Sabee and the Lois Sabee group began negotiations to divide the family businesses between them. During nearly eighteen months, they engaged in mediation facilitated by a retired Wisconsin state judge. The family members finally agreed to a division of the businesses in a document effective June 2, 2003.

During the Interim Period, in September 2002, Michael Sabee founded another company, JMS. At trial, he explained that he did it because "it seemed like a good idea." He began using the JMS name for conducting the same business he had been operating under the SPI name, using the same equipment and employees during this period. SPI continued to operate at the Linwood and Highland locations, but between February and August 2003, Michael Sabee moved his operations to a third facility, called in the record the Reeve Street facility. This facility had been leased to another company, but became available during 2003. Michael Sabee testified that he "had a business" and that he needed a "new home for it." He began using the JMS entity for

his manufacturing operations beginning in early 2003. At trial he referred to JMS as "doing business as" SPI.

During the period the parties were negotiating over the division of assets, debts, real estate, equipment, inventory, and customers, they did not make any agreements about the employees the three manufacturing companies shared. The settlement agreement and related documents include great detail about the division of all the above subjects, but contain no agreement for dividing the employees among the companies. There is a separate agreement dealing with "Production Machinery and Equipment" and another separate document dealing with customers. The major mention of employees occurs in the June 2, 2003, settlement agreement and concerns an agreement for shares of payroll costs to be borne by SPI during June and July 2003. SPI was to pay 76% of the payroll at the beginning of June, but that amount was to change as R. Sabee employees were laid off and SPI hired employees. The agreements refer to SPI, not to JMS, but by this time, Michael Sabee was using the JMS name to continue his manufacturing operations.

The only reference to employees is contained in a short paragraph near the end of the settlement agreement. It states, in part, that "R. Sabee will be significantly reducing the size of its workforce at the end of the Transition Period [August 2, 2003], and that Sabee Products currently is, and will continue to be looking to hire similarly qualified individuals to add to its workforce during and after the Transition Period. On approximately July 1, R. Sabee will provide Sabee Products with a tentative list of those employees which R. Sabee expects to layoff" on August 2.

According to the testimony of Joe Donovan who attended the mediation sessions, the Lois Sabee group wanted to negotiate a division the employees between the two family groups, just as they were negotiating a division of customers and machinery. However, Michael Sabee did not want to do this. At one negotiation session, a negotiator for Michael Sabee, Dan Flaherty, stated that his side of the negotiation would not divide the employees because SPI was not going to have a union, and that all the negotiators should be careful what they said, and be careful what was put into the settlement document.[3] Witness John Holland also testified that the Lois Sabee group raised the subject of negotiating about the employees in January 2003, and wanted to agree to a division of the employees. He testified that Flaherty replied that his side of the negotiation did not want to have any agreement with regard to employees because they didn't want a large block of union employees there. Holland mentioned the concept of accretion, and said he didn't understand how Michael Sabee could avoid having them when he would be "running the same machines in the same

[3] Where Michael Sabee's testimony conflicts with that of Donovan or John Holland, I credit Donovan and Holland over Michael Sabee. Michael Sabee demonstrated an extremely poor recollection of many facts, including non-controversial facts. He confessed to having a bad memory, and his testimony contains numerous failures of recollection. Holland had worked as a manager for R. Sabee for 2002 and 2003, and helped craft the division of the companies. His association with R. Sabee or any other party to this case ended approximately three years before his testimony. His demeanor and recall were both impressive, and I credit his testimony.

building with the same people?" Flaherty replied that it would be a "cold day in hell" before they'd let that happen without a fight. Flaherty did not testify, and another witness did not recall the statements being made. Michael Sabee did not address this issue in his testimony. Thus, the testimony of Holland and Donovan regarding Flaherty's statements are uncontradicted in the record.

R. Sabee did lay off approximately 120 employees in July 2003.

5. Status of Businesses after Division

After August 2, 2003, Michael Sabee's businesses, JMS and SPI, continued to manufacture the same products SPI had done for over 25 years, continued to use much of the same equipment, but bought some new equipment. At some time after the division of the businesses, Michael Sabee relocated JMS and SPI to the Reeve Street facility, but his testimony was vague on the timing of the relocation. Michael Sabee estimated SPI's proportion as approximately 75% of the total payroll before the division of the family businesses, and after the division, Michael Sabee continued to employ approximately 150 employees, which is roughly equivalent to the 75% of the previous bargaining unit of 200 employees.

The Lois Sabee group retained control of R. Sabee, Circle, and Draper. R. Sabee continued its manufacturing operations at the Linwood and Highland facilities with approximately 25% of the bargaining unit employees continuing to work for R. Sabee.

6. Bargaining Demands and Information Requests

During the course of negotiations between the two Sabee factions, the Union made several requests for information. Union representative Michael Pyne sent a letter to R. Sabee and to Michael Sabee on February 7, 2003, requesting the names of the companies that would be in existence after the corporate reorganization, their owners, assets, locations, customers, and other information. The letter also requested information regarding the Respondents' intentions about the employees. Pyne supplemented the information request on March 17, 2003, to include specific questions about SPI and JMS. R. Sabee, by John Holland, provided some of the information requested by the Union in April 2003. The Union received no information from Michael Sabee regarding any of the three companies he was operating at the time, SPI, Stanford, or JMS.

On April 25, 2003, the Union filed a grievance with both R. Sabee and Michael Sabee about new employees performing bargaining unit work at the Highland facility. These were apparently the employees hired by Michael Sabee under the JMS name. The Union also requested information about the employees and who employed them. John Holland, on behalf of R. Sabee, responded with some of the information requested, but Michael Sabee never responded to the grievance in any way, neither answering it nor providing the information requested. Upon learning that the employees were employed by Michael Sabee as JMS, Pyne wrote a letter to Michael Sabee on May 13, 2003, stating that the work being performed at the Highland facility was

bargaining unit work, and requesting an answer to the Union's grievance. Subsequently in June 2003, Pyne, by letter, reiterated his requests for the information he had not received, and added a request for a copy of the agreement for the division of the businesses. The Union also added the layoff of employees to its grievance of April 25, 2003.

7. Hiring by Michael Sabee

In February 2003, Michael Sabee hired Carolyn Bruex as a personnel director for JMS at the Reeve Street facility. Michael Sabee instructed Bruex to check on all bargaining unit applicants by talking with either himself, his brother Craig Sabee, or one of two supervisors of JMS, Pingel or McLeod. Within a month, Bruex developed a hiring policy and began hiring employees for JMS. For applicants who worked for R. Sabee in the Union-represented bargaining unit doing precisely the type of work JMS would be performing, Bruex would talk with Michael Sabee, Pingel or McLeod about the employee, as instructed. At times, she even talked with another employee about the applicant. In addition, she evaluated the application and in most cases interviewed the applicant before making a hiring decision. In all cases where one of the managers or the employee with whom she talked recommended against hiring the bargaining unit employee, Bruex did not hire that employee. JMS hired approximately 47 employees who had formerly worked in the bargaining unit.

For outside applicants, only an application and an interview were required. Bruex evaluated the application, decided whether or not to interview the applicant, and after an interview, decided whether or not to hire the applicant. She did not check with Michael Sabee or any other manager concerning outside applicants, but made those hiring decisions on her own.

By October 10, 2003, JMS had 152 employees performing production work, of whom 47 were former R. Sabee bargaining unit employees, while 105 had been hired from among the outside applicants. Approximately 92 R. Sabee bargaining unit employees applied for work with JMS. Bruex compiled a list of 54 R. Sabee bargaining unit employees whom JMS did not hire. For 33 of these individuals, Bruex relied on negative comments from Michael Sabee, Craig Sabee, Pingel, McLeod, or an employee about the applicant's work, which essentially vetoed their employment. In a few cases, there was an instruction to Bruex not to hire the applicant, but no reason was cited. Bruex gave no reason at all for not hiring six other former bargaining unit employees. Three applicants were rejected by Bruex because they said they wanted to work the same type of shift as they had done at R. Sabee, rather than a different one at JMS. Respondent offered no evidence for JMS's failure to retain or hire former bargaining unit employees except for the comments supposedly made to Bruex.

Had Respondent JMS retained or hired the 54 bargaining unit employees cited by Bruex in her testimony, there would have been 101 bargaining unit employees out of a total of 152 in the JMS workforce. Thus, the bargaining unit employees would have constituted a majority of the JMS workforce.

## B. Discussion and Analysis

### 1. Respondent status – 2001 and interim period

Prior to the reorganization of the Sabee family businesses, and prior to the events herein which are alleged to comprise unlawful conduct, the record evidence shows overwhelmingly that the companies were operated as a single enterprise. They have a long history of being run as a single entity, first by Reinhardt Sabee, and subsequently by his son, Michael Sabee. Not only were all the companies owned in whole or in part by the same family members, which constitutes "common ownership" under Board law, they operated in the same two locations in Appleton, shared offices and office staff, and manufactured the same products or types of products. The employees used by all the three companies which actually performed manufacturing, SPI, R. Sabee, and Draper, were all nominally employed by R. Sabee, but it is undisputed that they made products for all three of the companies using the same machinery.

Common control of both labor relations and financial dealings at all three of the manufacturing companies during this period is likewise overwhelmingly supported by the record evidence. It is Michael Sabee's own testimony that he was the president or operating officer of all three companies, made all the decisions regarding relations among and between the three companies, and made all financial decisions for all three companies. He stated that they were commingled, and that he switched money from one company to another as it was needed. Michael Sabee was in charge of all collective bargaining negotiations and signed all the collective bargaining agreements for nearly 20 years prior to 2001. Upon the undisputed facts and Michael Sabee's testimony alone, it is obvious that the Sabee family companies operated as a single enterprise and was a single employer under applicable Board and court law. I find that the record evidence demonstrates that all the named Respondents were owned by members of one family, had integrated operations, common management, and common control of labor relations. ***Radio & Television Broadcast Technicians Local 1264 v. Broadcast Service of Mobile, Inc.***, 380 U. S. 255, 276 (1965); ***Beverly California Corp.***, 326 NLRB 232, 242 (1998). Therefore, I find that the enterprise as a whole, as well as each of its constituent companies, especially the manufacturing companies, SPI, R. Sabee, and Draper, all had the same obligations under the Act. I further find that Michael Sabee, as the chief executive of the three manufacturing companies, was the person who normally did carry out those obligations up to and through the end of 2001.

### 2. The Interim Period: January 2002 through August 2003

When the Lois Sabee group decided that they needed to separate their business interests from those of Michael Sabee, it took approximately eighteen months to divide and disentangle the complexities of the Sabee family companies, their customers, machinery, assets, and real estate. The reorganization resulting from this process was not completely agreed until June 2, 2003, and was not fully carried out until August 3, 2003. It is therefore logical that throughout the interim period, and until August 3, 2003, the employing entity continued to be the single enterprise it had been for fifty years or so. During this period also, therefore, each part of the Respondent had the same

obligations it had always had under the Act and under the collective bargaining agreement to which it was a party. I find that the companies did not become two separate entities until the division of the businesses was finally completed on August 3, 2003. From that date onward, the Lois Sabee group controlled R. Sabee, and approximately one-fourth of the manufacturing business, and Michael Sabee continued to control the majority, approximately 75%, of the manufacturing business.

### 3. JMS and SPI Repudiation of the Collective Bargaining Agreement in February 2003

SPI continued to operate as one among the family group of companies, as it had in the past. Michael Sabee continued to function as its chief operating officer, although he no longer performed that function for R. Sabee and Draper. The managers hired by the Lois Sabee group chiefly operated R. Sabee and Draper during the interim period.

SPI continued to be Michael Sabee's manufacturing company, but in February 2003, he began to use the name JMS for his manufacturing operations, and apparently to move some of them to another location, Reeve Street. In testimony, Michael Sabee described JMS as "doing business as" SPI. By the time of his testimony in February 2005, SPI was not manufacturing, but JMS was, and Michael Sabee could not remember which company paid him. He did recall that all the production employees were nominally employed by JMS. I find that Michael Sabee's production operations were a continuation of the employing entity. SPI was one of the original Sabee family companies found above to be part of the overall employing enterprise, and had performed a large majority of the manufacturing work. JMS was simply a new name created by Michael Sabee to use for his SPI portion of the business. At trial, counsel for Respondent asked Michael Sabee a series of questions about JMS, referring to it in questions as Michael Sabee's "new business" and its move to the Reeve Street facility. Michael Sabee responded, "I actually had a business; I needed to find a new home for it." This testimony, along with his testimony that JMS is "doming business as" SPI, shows clearly that Michael Sabee considers JMS to be simply another name for "his" business. In addition, ownership, management, financial control, and labor relations control for both SPI and JMS reside solely in Michael Sabee. Based on the record evidence, I find that SPI and JMS are alter egos of one another. See, e.g., ***Vallery Electric, Inc.***, 336 NLRB 1272 (2001).

Beginning in February 2003, Michael Sabee began to employ employees under the JMS name. According to the testimony of Bruex, these employees worked longer shifts than the eight-hour shifts agreed to in the collective bargaining agreement. In fact, it is undisputed that Michael Sabee did not continue to apply the collective bargaining agreement to the employees who were nominally employed by JMS. On the contrary, he repudiated the collective bargaining agreement and withdrew recognition from the Union as to employees who continued to work for him under the JMS name. He unilaterally changed their terms and conditions of employment, to terms and conditions different from the agreement.

It is undisputed in this record that Michael Sabee repudiated the collective bargaining agreement regarding continued SPI operations and JMS operations. In

addition, it is undisputed that Michael Sabee gave the Union no notice and no opportunity to bargain about other changes to employees' wages, hours, and working conditions, to the extent these were not covered by the collective bargaining agreement. It is further undisputed that Michael Sabee failed and refused to respond to any of the numerous information requests made by the Union. Respondent asserts only that JMS had no obligation to recognize the Union or to continue the collective bargaining agreement in effect.

It is further undisputed that he did not give the Union notice of his move of employees and equipment to Reeve Street during the late winter and spring of 2003, nor did he afford the Union an opportunity to bargain about the decision to move, the application of the collective bargaining agreement to the relocated employees, the movement of machinery, or any other aspect of the relocation or its effects on employees.

As I have found above, the entities comprising the Sabee family enterprise, including JMS, were part of a single integrated enterprise until formally reorganized an separated on August 3, 2003. Therefore, JMS, like the other Sabee family entities, was a party to the collective bargaining agreement, and had an obligation to recognize the Union. It also had an obligation to provide relevant information about the terms and conditions of employment of the bargaining unit employees. I find that Michael Sabee, acting both as SPI and as JMS, violated Section 8(a)(5) of the Act by repudiating the collective bargaining agreement, withdrawing recognition from the Union, and failing and refusing to provide information to the Union.

4. Unilateral Change Allegations

The layoff of approximately 120 bargaining unit employees in June and July 2003 was announced to the bargaining unit employees by R. Sabee. However, the formal division or reorganization of the Employer had not yet been accomplished. Consistent with the finding above that the Employer continued to be a single employer until the date of the formal division, I find that the layoff of employees in June and July 2003, was conducted by the overall single employer, and was therefore the responsibility of each constituent entity. Thus SPI and JMS, by laying off 120 employees without notice to the Union and without affording the Union an opportunity to bargain about the layoff or its effects, violated Section 8(a)(5) of the Act. It is axiomatic under Board law that alter egos are liable for the actions and the unfair labor practices of one another. See, e.g., ***Vallery Electric, Inc.***, above.

5. Status of the Employer after August 3, 2003

After August 3, 2003, the Lois Sabee group, consisting of R. Sabee, Draper, and other non-manufacturing companies, continued manufacturing, on a smaller scale, the same type of products for the same customers with the same machinery at the same location. The same family group was in control of the businesses. They had only about one-fourth of the bargaining unit employees, as their proportion of the overall manufacturing business was smaller. Whether R. Sabee had an obligation under the collective bargaining agreement as a continuation of the former employer, or whether it

is more properly analyzed as a successor employer need not be decided here. No allegations regarding R. Sabee are before me, and I decline to decide any such issues.

At the very least, it is apparent that the family businesses became two separate bargaining units on August 3, 2003, with approximately one-fourth of the employees continuing their employment with R. Sabee, and the remainding employees either laid off or being "rehired" by Michael Sabee's company, JMS.

As set forth above, SPI and JMS are alter egos of one another. Whether they are a continuation of the former employer, the Sabee family businesses, is a different issue. The Board has ruled that a finding of alter ego status may be appropriate even where the motivation for a change in the employing enterprise is not undertaken for the sole purpose of avoiding a bargaining obligation. There are situations in which an employer takes advantage of a business change to attempt to rid itself of the union. I find that in the instant case, Michael Sabee attempted to take advantage of the division of the family business which was forced upon him by the Lois Sabee group to try to evade his and his companies' obligations under the collective bargaining agreement and under the NLRA.

Michael Sabee formed another company, employed employees in its name, apparently in the view that a new name was all that was needed to justify his repudiation of the collective bargaining agreement and his bargaining obligation as a whole. Michael Sabee, in his testimony, did not distinguish between JMS and SPI, but for the most part, spoke generally of his business. I have found above that JMS and SPI were and are operated by Michael Sabee as a single entity. The issue posed is whether this single entity is a continuation (or alter ego) of the Sabee family businesses, or a successor of the Sabee family businesses.

The record evidence supports a finding that Michael Sabee's current business is a continuation, or alter ego, of the Sabee family businesses. First, there is common ownership in that Michael Sabee owned a majority of the previous family business, at least 75% of it, as shown by the amount of business he received when the companies were divided. Secondly, prior to the division, Michael Sabee was the chief manager of all the manufacturing companies, and continues to be the chief manager of SPI and JMS. Thirdly, Michael Sabee conducted labor relations for the original family entity for nearly 20 years and continues to do so for SPI and JMS. Michael Sabee formerly managed all the financial transactions for the original family entity, and continues to do so for SPI and JMS. The fact that Michael Sabee relocated his manufacturing operations to a new location in the same town is not dispositive, and cannot outweigh all the other factors tending to show identity between his businesses and the original family entity. The fact that SPI and JMS continued making the same products for the same customers, and that their share of the original family entity is approximately three-quarters of the original business is strong evidence that Michael Sabee's companies should be considered as the continuation of the original family entity, and thus as the employer which was and is obligated to continue its bargaining obligation. As the Board wrote in ***Martin Bush Iron & Metal***, 329 NLRB 124 (1999), "as the Eighth Circuit noted in ***Crest Tankers, Inc. v. National Maritime Union***, 796 F.2d 234, 238, fn 2 (8th Cir. 1986), the presence of a legitimate business reason for a change in corporate

organization does not preclude finding alter ego status." I find that SPI and JMS, were a continuation of the employer, and as such, were obligated to continue to abide by the collective bargaining agreement and to recognize and bargain with the Union. By the undisputed failure of SPI and JMS to continue the collective bargaining agreement in effect after August 3, 2003, and by its undisputed refusal to recognize and bargain with the Union, I find that Respondents SPI and JMS violated Section 8(a)(5) of the Act.[4]

6. Failure to Provide Information after Division

It is undisputed that Michael Sabee, on behalf of JMS and SPI, did not respond to information requests of the Union nor to its grievance. Respondents' only defense is that they had no obligation to recognize the Union. I have found above that they do have such an obligation, and so Michael Sabee's companies SPI and JMS were obligated to provide the information requested in the Union's letters and the attachment to the grievance. Respondents violated Section 8(a)(5) of the Act by refusing to provide the information.

7. JMS and SPI Hiring Practices

As a continuation (alter ego) of the original family entity, SPI and JMS had an obligation to bargain with Union about both the division of the business (and the effects on employees) and the relocation of employees, along with the effects of the relocation on employees. Furthermore, it had an obligation to continue the contract in effect and therefore all its terms and conditions. If Respondents had observed their obligations, SPI and JMS would then have continued the employment of approximately 75% of the bargaining unit employees. Instead, those employees were laid off. SPI and JMS established terms and conditions of employment different from those in the collective bargaining agreement, and hired new employees. By this conduct, Respondents SPI and JMS violated Section 8(a) 5) of the Act.

Even if JMS and SPI had not been found to be a continuation of the employing enterprise, they are still a single employer and would be a successor under applicable Supreme Court and Board law. Many of the same facts are relevant. Michael Sabee continued to own and operate the "new" company, manufacturing the same products, using most of the same equipment, and in the same location until the business division obliged him to relocate. The record evidence shows that Michael Sabee intended from at least early 2003 to avoid any successor bargaining obligation by not employing current employees for precisely that reason. The statements of his representative, Flaherty, evidence a determination to avoid retaining Union-represented employees so as to constitute a majority of the workforce.

Even if this statement were not considered as evidence, the record is replete with

[4] Even SPI and JMS were analyzed as a successor employer to the original family entity rather than a continuation, they would still be under an obligation to recognize and bargain with the union, as is set forth in Section B.7., below. The remedy for their actions would be the same.

additional evidence of Michael Sabee's intent to avoid recognizing the Union. The reorganization settlement agreement provides evidence that Michael Sabee refused to deal with the other party to the division negotiations with regard to employees. Donovan and Holland testified credibly that the Lois Sabee group desired to negotiate a division of the employees between the two parties, but that the Michael Sabee side of the negotiations adamantly refused to negotiate about this important business decision. The fact that the division of employees, hitherto used by all six related companies, was not dealt with in the discussion, specifically by the insistence of Michael Sabee representative, when every other aspect of the businesses was carefully divided, is strong evidence that Respondent wished to avoid its bargaining obligation. While the plant, real estate, office space, money, company names, customers, and products, were all dealt with in detail, the allocation of the approximately 250 bargaining unit employees to the two divided entities of the original family entity was not mentioned at all in the discussion. This evidence was not objected to and should be relied upon. The settlement agreement shows that the division of all other aspects of the Sabee family businesses was minute and detailed. Michael Sabee's clear determination to be rid of Union-represented employees in his approximately 75% share of the manufacturing operation may be inferred from this conduct. I so infer.

In addition, Michael Sabee's unlawful conduct during February through August 2003, the changes to terms and conditions of employment undertaken unilaterally and without affording the Union notice or an opportunity to bargain about the changes or about their effects is strong evidence of animus. Further evidence of animus against Union-represented employees is his refusal to provide information during a time when he still had an obligation to do so under any theory, his puzzling refusal to continue the employment of most of the experienced employees already in his employment, and the discriminatory hiring scheme he ordered his personnel director to use to hire new, mainly non-Union-represented employees. Respondent advanced no reasons for its failure to hire experienced employees who already knew the exact work they would be doing supports the inference that Respondent did so in order to avoid majority status of bargaining unit employees. Taken together, these facts are ample evidence from which substantial animus against employing Union-represented employees may be, and should be, inferred. I find that the totality of Michael Sabee's conduct evinced intent to avoid any obligation of SPI or JMS to continue to recognize the Union, and a determination to get rid of a sufficient number of Union-represented employees so that they would not constitute a majority of employees. It is well settled that a successor employer who refuses to hire its predecessor's employees in order to evade its bargaining obligation will be found to have violated Section 8(a)(3) of the Act by so doing. ***E. S. Sutton Realty Co.***, 336 NLRB 405 (2001). See also***, D & K Frozen Foods***, 293 NLRB 859 (1989); ***U. S. Marine Corp***., 293 NLRB 669 (1989).

Animus against the bargaining unit employees can also be inferred from Michael Sabee's discriminatory hiring scheme. Union-representative applicants were subjected to an extra requirement which other applicants were not. Such conduct has repeatedly been found by the Board to be unlawful discrimination. See, e.g., ***New Otani Hotel and Garden***, 325 NLRB 928 (1998); ***Monfort of Colorado***, 298 NLRB 73, 79-83 (1990), enforced in relevant part, 965 F.2d 1538 (10th Cir. 1992). Had Respondent hired all 92 bargaining unit applicants, they would have constituted a majority of its approximately

150-person workforce. I find that Respondent SPI and JMS violated Section 8(a)(3) of the Act by imposing additional requirements on union represented applicants for employment, and that they discriminated in hiring union-represented employees so as to avoid successorship status.

## CONCLUSIONS OF LAW

1. By laying off employees because they were represented by the Union, by refusing to continue the employment of employees because they were represented by the Union, by refusing to hire or rehire employees because they had been represented by the Union, by intentionally limiting its retention and rehiring of bargaining unit employees in order to avoid employing a majority of the represented employees, by refusing to continue to employ bargaining unit employees under their contractually required terms and conditions of employment, and by discriminatorily requiring an additional level of review for represented employees who sought to continue their employment, or in the alternative, be rehired, Respondent has violated Section 8(a)(3) and (1) of the Act.

2. By failing and refusing to provide necessary information about the bargaining unit employees and the decisions affecting employees and the effects upon them of the reorganization of Respondent's business as requested by the Union, by repudiating the collective bargaining agreement in effect and by refusing to continue its terms and conditions of employment, by withdrawing recognition of the Union, by unilaterally and without affording the Union notice or an opportunity to bargain, making changes to employees' terms and conditions of employment, by laying off employees and refusing to continue their employment without affording the Union notice or an opportunity to bargain, by unilaterally setting new terms and conditions of employment beginning in February 2003 without affording the Union notice or an opportunity to bargain about the decision or the effects of such conduct, and by continuing to refuse to recognize and bargain with the Union, Respondent has violated Section 8(a)(5) and (1) of the Act.

4. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

## THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

I shall recommend that Respondent be required to restore the terms and conditions of employment in effect at the time it unlawfully repudiated the collective bargaining agreement and to maintain those terms and conditions in effect unless and until changed through bargaining with the Union. I shall also recommend that Respondent be ordered to remove from the employment records of all bargaining unit employees any notations relating to the unlawful layoffs, refusals to continue their employment, and/or refusals to hire them, and to make them whole for any loss of

earnings or benefits they may have suffered due to the unlawful action taken against them, in accordance with ***F. W. Woolworth Co.***, 90 NLRB 289 (1950), plus interest as computed in accordance with ***New Horizons for the Retarded***, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondents, Sabee Products, Inc., JMS Converters, Inc. d/b/a JMS Converting, Stanford Professional Products, and Sabee Realty, Inc., a single employer and/or alter egos and continuing enterprise, or in the alternative as successor, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off employees because they were represented by the Union, refusing to continue the employment of employees because they were represented by the Union, refusing to hire or rehire employees because they had been represented by the Union, intentionally limiting its retention and rehiring of bargaining unit employees in order to avoid employing a majority of the represented employees, refusing to continue to employ bargaining unit employees under their contractually required terms and conditions of employment, and discriminatorily requiring an additional level of review for represented employees who sought to continue their employment, or in the alternative, be rehired.

(b) Failing and refusing to provide necessary information about the bargaining unit employees and the decisions affecting employees and the effects upon them of the reorganization of Respondent's business as requested by the Union, repudiating the collective bargaining agreement in effect and refusing to apply the continue its terms and conditions of employment, withdrawing recognition of the Union, unilaterally and without affording the Union notice or an opportunity to bargain, making changes to employees' terms and conditions of employment, laying off employees and refusing to continue their employment without affording the Union notice or an opportunity to bargain, unilaterally setting new terms and conditions of employment beginning in February 2003 without affording the Union notice or an opportunity to bargain about the decision or the effects of such conduct, and continuing to refuse to recognize and bargain with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize the Union and, upon request, bargain collectively with the Union in a unit consisting of our employees engaged in production and maintenance; excluding professional employees, office employees, clerical employees, guards and supervisors.

(b) Restore the terms and conditions of employment in effect as of the date of our repudiation of the collective bargaining agreement, and continue those terms and conditions in effect unless and until changed through collective bargaining with the Union.

(c) Provide the Union with the information it requested in its letters, e-mail letters, and grievance attachments dated from February 7 through September 8, 2003.

(d) Within 14 days from the date of this Order, offer full reinstatement or a job offer at restored terms and conditions of employment to all employees laid off or not hired by Respondents to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(e) Make whole all employees laid off and not retained in employment or not hired or rehired for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(f) Make whole all employees retained in employment for any loss of earnings and other benefits suffered as a result of the Respondent's refusal to continue the terms and conditions of the collective bargaining agreement, in the manner set forth in the remedy section of this decision.

(g) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs, and/or refusals to hire all the bargaining unit employees not hired or retained, and within 3 days thereafter notify the employees in writing that this has been done and that the actions will not be used against them in any way.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its Appleton, Wisconsin locations copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the

Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1,2003.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., February 6, 2007.

_____
Jane Vandeventer
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

**Form, join, or assist a union**
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

**WE WILL NOT** refuse to bargain collectively with the Union in the following appropriate unit:

All employees engaged in production and maintenance; excluding professional employees, office employees, clerical employees, guards and supervisors.

**WE WILL NOT** repudiate our obligation to bargain collectively with the Union.

**WE WILL NOT** fail or refuse to abide by the collective bargaining agreement in effect between us and the Union, nor to continue the terms of the collective bargaining agreement in effect unless and until changed through bargaining with the Union.

**WE WILL NOT** refuse or fail to provide relevant information requested by the Union for the purpose of carrying out its representational duties.

**WE WILL NOT** refuse to bargain collectively with the Union by making changes in employees' terms and conditions of employment without first giving the Union notice of the proposed changes and an opportunity to bargain about them.

**WE WILL NOT** refuse to continue your employment or lay you off because you are represented by a Union.

**WE WILL NOT** refuse to continue your employment under contractually required terms and conditions of employment.

**WE WILL NOT** refuse to continue your employment or lay you off in order to avoid employing a majority of employees who have been in the bargaining unit.

**WE WILL NOT** discriminate against you in hiring or rehiring because you had been represented by the Union by imposing additional conditions on your employment application.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL**, upon request, bargain collectively with the Union in the unit set forth above.

**WE WILL** provide the Union with the information it requested in its letters, e-mail letters, and grievance attachments dated from February 7 through September 8, 2003.

**WE WILL** restore the terms and conditions of employment in effect as of the date of our repudiation of the collective bargaining agreement, and continue those terms and conditions in effect unless and until changed through collective bargaining with the Union.

**WE WILL** make whole, with interest, all employees for any loss of earnings or other benefits they may have suffered as a result of our unlawful failure to abide by the collective bargaining agreement and by our unlawful changes in terms and conditions of employment.

**WE WILL** make whole, with interest, all employees for any loss of earnings or other benefits they may have suffered as a result of our unlawful failure to continue their employment and/or our refusal to hire or rehire them

**WE WILL** offer employment to all bargaining unit employees whom we failed to offer employment in 2003 under the restored terms and conditions of employment set forth above.

**R. SABEE COMPANY, LLC, DRAPER PRODUCTS, INC., CIRCLE MACHINERY & SUPPLY CO., SABEE PRODUCTS, INC., STANFORD PROFESSIONAL PRODUCTS, SABEE REALTY, INC. AND JMS CONVERTERS, INC. d/b/a JMS CONVERTING, as single employer**

**(Employer)**

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

310 West Wisconsin Avenue, Federal Plaza, Suite 700

Milwaukee, Wisconsin 53203-2211

Hours: 8 a.m. to 4:30 p.m.

414-297-3861.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 414-297-1819.